ATTORNEY GENERAL'S OFFICE,
Austin, Nov. 2, 1871.

House bill No. 337 is respectfully returned to the Executive, with the following opinion:

This bill bears the same title with an act of a wider and more comprehensive nature, approved May 13, 1846.

It evidently amends that act without so much as referring to its title. Besides, while stating that it does not "repeal any of the laws of this State in force at the passage hereof," it does, in effect, repeal, supersede and supply section sixty-seven of said act (see Oldham & White's Digest, article 452), which contains an adequate provision for taking the deposition of any witness about to leave the State or county, or who is aged, sick, official, or a female.

As it is the right in general of parties litigant, under our system of jurisprudence, to have witnesses examined orally in open court, so that the jury may be able to form an opinion as to their credibility, from their mode of testifying and their bearing, this bill is manifestly in derogation of that right, which exists at common law as well as by virtue of our statutes. A right so important cannot with safety be abridged, and should in no case be circumscribed without the exercise of the greatest caution.

Why this bill should restrict the proof of service to the oath of affirmation of the party, his agent or attorney, is not perceived. The sheriff, not being interested, certainly ought not to be precluded from making a return showing service, and the oath or affirmation of an interested person made the sole proof, especially when such an oath or affirmation operates to prevent the opposite party from obtaining a continuance. This appears to be a most dangerous innovation.

The bill under consideration appears to be defective in so far as it fails to make any adequate and just provision as to the costs which it may occasion. Were it a law, and were the plaintiff in bringing

a suit to cause subpœnas to be issued for his witnesses, the defendant might nevertheless proceed to take the depositions of those witnesses, who being already subpœned might, and indeed ought to, attend court and testify. In case the plaintiff should lose his suit, as the law now stands the expenses of taking these depositions, made unnecessary and not allowed to be read in evidence on account of the attendance of the witnesses, would be taxed against him. This would be unjust, and in some cases might prove ruinous.

Finally, the bill provides that it shall take effect from its passage, which should never be the case, except when some emergency requires that a bill should so take effect. It is a gross injustice to the people of the State of Texas to cause them to be bound by a law which they cannot by any possibility have notice, unless some urgent State necessity demands that they should be so bound.

ALEXANDER, Attorney General.

Laid over under the rules.